

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 755 OF 2005
WITH
CIVIL APPLICATION NO.852 OF 2005

Shri Vithalrao Hiraji Jadhav .. Appellant
versus
Mumbai Municipal Corporation &ors. .. Respondents

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Mr.V.A. Thorat, Sr.Counsel with Mr.J.S. Kini for
the appellant.

Mrs.Geeta Jogalekar for the respondent no.1.

Mrs.Geeta Mulekar, G.P. for the respondent no.2.

CORAM : B.H. MARLAPALLE, J

DATED : 20th September 2005.

P.C.:

1. Heard Mr.V.A. Thorat, the Learned
Sr.Counsel with Mr.J.S. Kini for the appellant
plaintiff, Mrs.Geeta Jogalekar for the respondent
no.1 and Mrs.Geeta Mulekar, G.P. for the respondent

no.2.

2. This appeal arises from the order dated 2nd July 2005 passed by the learned Judge of the City Civil Court dismissing the Notice of Motion No.4009 of 2002 filed in L.C.Suit no.5703 of 2002.

3. The plaintiff was issued a notice dated 10th December 1998 under section 351 of the Mumbai Municipal Corporation Act 1888 for demolition of the unauthorised structure i.e. the Industrial Galas area admeasuring 7600 sq.ft. with d.m.walls, a.c. sheet roof supported on m.s. angle and covering of open space with tin sheet along with adjoining area approximately 3185 s.ft. on the land of Salt Commissioner of Govt. of India as shown in the sketch. As there was no response from the occupier/owner of the unauthorised structure covered by the said notice, the Asstt.Commissioner of the respondent no.1 Corporation addressed a letter to the plaintiff and others on 22.10.2002 granting them seven days time to submit the details if any and failing which the structure would be demolished. The plaintiff approached the City Civil Court by filing L.C. Suit no.5703 of 2002 for declaration and

permanent injunction in respect of the suit structure admeasuring 60 ft x 10 ft on the plot of land admeasuring 100 x 100 ft in Survey No.320, Chheda Nagar, Chembur. Notice of Motion no.4009 of 2002 was taken out for temporary injunction and the same has been dismissed. By the impugned order, the learned Judge of the trial Court held that the protection claimed by the plaintiff pending the suit could not be granted as the suit structure was not clearly identified by the plaintiff himself. The reasoning in paragraph no.3 of the impugned order in this regard reads as under:-

"The plaintiff claimed that the property standing on Survey No.320,, Chheda Nagar, Chembur was occupied by him since 1961 and prayed that his possession over it needs to be protected. The description of the property is not given anywhere in the plaint. The Survey Number as mentioned in the plaint is taken into account by me for deciding this motion and I am scrutinizing the claim of the plaintiff on the basis of the same.. The plaintiff annexed the tax assessment bill in respect of the Survey No.96. The report of the R.T.O. in respect of the same property in Govandi. The report of the BMC on Page No.22 is in respect of some property at Nagwadi, Chembur. There is no reference of Survey No.24. It is in respect of the Gala No.1 and nothing to do with Survey No.320. Similarly, the electric bills on page no.26 is in respect of the plot no.2. The two applications on page no.27 and 28 do not refer to any survey number and plot

number. The complaint application filed by the plaintiff to police, he himself mentions address as Ambedkar Nagar and not Chheda Nagar. If all these documents are seen, the plaintiff himself is not sure for which property he wants such protection. That apart it is not his prayer also that the defendant should exercise due process of law. He is claiming the blanket injunction against the defendant to say that the property shall not be demolished at all (even though it may be illegal)

4. Mr.Thorat, learned Sr. Counsel has pointed by referring to the affidavit filed by the respondent no.1 as well as additional affidavit submitted by the plaintiff, that the suit structure was properly identified and even otherwise, the structure is standing on the land belonging to the Salt Department, Government of India. It was assessed to property tax from 1973 onwards by the Respondent No.1 Corporation and it cannot be called as an illegal structure. It was further submitted that as the structure was existing prior to 1st January 1995 which is liable to be protected in view of Chapter I-B added to the Maharashtra Slum Area (Improvement, clearance and Redevelopment) Act 1971.

5. In the affidavit in reply filed by the Corporation, it has been stated that the suit

structure is located in the Jadhav compound, Survey No.320, Chheda Nagar, Chembur. The said area is also called as Nagwadi, Lokhande Marg, Chembur. The area was inspected by the Officers of the Corporation on 10th December 1998 during which it was detected that in the Jadhav compound which is an industrial premises, there are 17 sheds and two open spaces of different sizes and business of different nature was being carried out from each of these shops by different persons. It was learnt that the sheds were run without any valid document. The Officers prepared the inspection report giving the details of the names of the persons occupying the said sheds, their area, the activity carried out and the power used. Pursuant to the said notices u/s.351 of the MMC Act were issued to the respective owner/ occupiers. It is further stated that pursuant to the letter dated 16.10.2001 issued by the Asstt. Commissioner, the plaintiff submitted a letter dated 20.10.2001 forwarding certain correspondence. Mrs.Jogalekar, the learned counsel for the Corporation has placed the concerned file before the Court and along with the letter dated 20th October 2001 there are about 11 documents. Two of them are the letters issued by the respondent Corporation calling upon Mrs.Mayadevi B. Jadhav of

Pinky Auto Garage, Lokhande Marg, Chembur to demolish the unauthorised structure. The other documents are copies of the correspondence, the plaintiff had with different authorities viz. Commissioner - Salt, Superintendent of Salt, wherein he admitted that part of the land from Survey No.320 at Chembur and admeasuring about 100' x 100' was encroached by him and after levelling part of the marshy land, he constructed a structure admeasuring 20 ft x 60 ft. He also stated that he was ready and willing to pay the compensation and/or rent as may be fixed by the Superintendent of Salt. A copy of the letter dated 27th/31st December 1981 addressed by the Inspector of Salt, Trombay to the plaintiff shows that he had illegally developed the portion of the land put up a structure in an area of sector 7 of Chheda nagar and therefore, he was called upon to remove the same. The plaintiff claimed that the said structure was assessed by the Municipal Corporation for tax since 1973 and in the year 1980, he obtained a licence of kerosene dealer from Bharat Petroleum Corporation Ltd. He was using the place for repairs of tankers, use of distribution of kerosene. There is nothing in this correspondence to show that the plaintiff had ever applied to the Corporation or any other competent

authority for permission to construct and put up the structure even on the encroached land admeasuring 100' x 100'. This assessment of record has been done by me notwithstanding the reasons given by the trial Court that the plaintiff had failed to identify the structure covered by the notice for which he was seeking protection pending the suit. It is thus clear that prima facie there is no material warranting an order of temporary protection. Mr.Thorat, the learned Sr.Counsel by referring to the letter dtd.22.10.2002 received by the plaintiff from the Asstt. Commissioner of the Corporation submitted that under the Maharashtra Slums Area Act of 1971, the structure is required to be protected. Whether the said Act is applicable to the area, in which the structure is located is an issue which will have to be decided by the competent authority but prima facie it is clear that the protection as prayed for cannot be granted.

6. Hence, this appeal fails and the same is hereby dismissed in limine. Civil Application does not survive.

7. Mr.Thorat at this stage submits an oral application for stay to this order. Application is

hereby rejected.

B.H. MARLAPALLE, J